

1992 CASE DIGEST INDEX

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PART I—STATE CRIMES

1. VALIDITY OF CRIMINAL STATUTES IN GENERAL

§ 1.15 Severability of statutes

Florida Definition of "sexual conduct" applicable to Florida law barring child sexual performances was overbroad, but offending portion was severable from remainder. *Schmitt v. State*, 590 So. 2d 404 (1991), 28 CLB 407.

3. NATURE AND ELEMENTS OF SPECIFIC CRIMES

§ 3.80 Drug violations

Arkansas Delivering "counterfeit hashish" was not a crime in Arkansas; therefore, the charge could not validate an arrest warrant that would support search of defendant's premises. *Abbott v. State*, 819 S.W.2d 694 (1991), 28 CLB 407.

§ 3.85 —Possession

Kansas Statute barring possession of controlled substance without affixing tax stamp is constitutional. *State v. Berberich*, 811 P.2d 1192 (1991), 28 CLB 89.

§ 3.87 Possession with intent to distribute

Minnesota Statute making possession of "crack" cocaine more culpable than possession of powder cocaine denies blacks equal protection under Minnesota constitution. *State v. Russell*, 477 N.W.2d 886 (1991), 28 CLB 403.

New Jersey Intent to distribute drugs within 1,000 feet of school property is not prerequisite to conviction under statute barring possession of drugs with intent to distribute while on or within 1,000 feet of school property. *State v. Ivory*, 124 N.J. 587, 592 A.2d 205 (1991), 28 CLB 181

§ 3.130 Firearms violations

New Jersey New Jersey's forfeiture statute could be applied to motorist's contraband handguns when motorist did not comply with federal Firearms Owners' Protection Act. *In re Two Seized Firearms*, 602 A.2d 728 (1992), 28 CLB 489.

3.160 Fraud

Arkansas Defendant cannot be convicted of fraudulent use of credit card if he does not obtain property thereby. *Davidson v. State*, 810 S.W.2d 327 (1991), 28 CLB 90.

§ 3.195 Vehicular homicide

California For purposes of gross vehicular manslaughter, gross negligence can be found from overall circumstances of intoxication alone, without regard to manner of driving. *People v. Bennett*, 819 P.2d 849 (1991), 28 CLB 405.

§ 3.265 Intoxicated driving

California For purposes of gross vehicular manslaughter, gross negligence can be found from overall circumstances of intoxication alone, without regard to manner of driving. *People v. Bennett*, 819 P.2d 849 (Cal. 1991), 28 CLB 405.

Maine A person may be convicted as an accomplice to operating under the influence of intoxicating liquor. *State v. Stratton*, 591 A.2d 246 (1991), 28 CLB 92.

§ 3.270 —Scientific tests

Arizona Law enforcement officers, when obtaining a blood sample of a person suspected of driving under the influence of alcohol, need not advise the suspect of his right to obtain a portion of the same sample, even though the warning is necessary for breath samples. *State v. Kemp*, 813 P.2d 315 (1991), 28 CLB 91.

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§ 3.275 Kidnapping

Tennessee Kidnapping will not be found where an unlawful confinement, movement, or detention is incidental to accompanying felony and did not increase the risk of harm to the victim. *State v. Anthony*, 817 S.W.2d 299 (1991), 28 CLB 292.

§ 3.320 Obscenity

Florida Definition of "sexual conduct" applicable to Florida law barring child sexual performances was overbroad, but offending portion was severable from remainder. *Schmitt v. State*, 590 So. 2d 404 (1991), 28 CLB 407.

§ 3.355 Rape

§ 3.365 —Consent

Nebraska Consent or reasonable mistake as to the age of the victim is not a defense to first-degree sexual assault on a child. *State v. Campbell*, 473 N.W.2d 420 (1991), 28 CLB 176.

§ 3.370 Resisting arrest

Utah Common-law right to forcibly resist one attempting to effect an illegal arrest is not relevant because in Utah, the common law has been replaced by statute. *State v. Gardiner*, 814 P.2d 568 (1991), 28 CLB 179.

§ 3.375 Robbery

New Jersey Purse snatching ordinarily does not involve sufficient force to constitute a

robbery. *State v. Sein*, 590 A.2d 665 (1991), 28 CLB 88.

5. PARTIES

§ 5.05 Aiders and abettors

California Getaway driver in robbery may be convicted of aiding and abetting robbery, and therefore, of being principal rather than mere accessory after the fact. *People v. Cooper*, 53 Cal. 3d 1158, 282 Cal. Rptr. 450, 811 P.2d 742 (1991), 28 CLB 182.

Maine A person may be convicted as an accomplice to operating under the influence of intoxicating liquor. *State v. Stratton*, 591 A.2d 246 (1991), 28 CLB 92.

6. DEFENSES

§ 6.20 Entrapment

Florida Basing informer's sentence reduction on amount of drugs seized due to information he furnished did not violate defendant's due process rights. *State v. Hunter*, 586 So. 2d 319 (1991), 28 CLB 298.

Florida Requiring a defendant to prove the affirmative defense of entrapment beyond a reasonable doubt does not violate the Florida or U.S. Constitution. *Herrera v. State*, 594 So. 2d 275 (1992), 28 CLB 490.

Michigan Divided court ruled that subjective factors play a part in objective test for entrapment. *People v. Juillet*, 475 N.W.2d 786 (1991), 28 CLB 292.

Part II—STATE CRIMINAL PROCEDURES, ANCILLARY PROCEEDINGS

7. JURISDICTION AND VENUE

§ 7.05 Venue

Indiana Defendant was not entitled to a change of venue based on newspaper articles

containing factual accounts of the crime and incriminating statements by defendants. *Eads v. State*, 577 N.E.2d 584 (1991), 28 CLB 174.

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8. PRELIMINARY PROCEEDINGS

§ 8.00 Grand Jury Proceedings

New Jersey State agency's lack of investigatory resources will not sustain showing of particularized need necessary to gain access to secret grand jury transcripts. *In re Grand Jury Testimony*, 591 A.2d 614 (1991), 28 CLB 183.

§ 8.35 Pretrial proceedings

California Enactment abolishing defendant's right to postindictment preliminary hearing is valid. *Bowens v. Alameda County Superior Court*, 820 P.2d 600 (1991), 28 CLB 402.

9. INDICTMENT AND INFORMATION

§ 9.05 Probable cause

California Law allowing hearsay at preliminary hearings is constitutional, but limits must be placed on the use of such testimony. *Whitman v. Santa Clara County Superior Court*, 820 P.2d. 262 (1991), 28 CLB 403.

Illinois Juvenile's possession of \$1,000 in cash did not constitute probable cause to believe a crime had been committed. *In re D.G.*, 581 N.E.2d 648 (Ill. 1991), 28 CLB 409.

10. PRETRIAL MOTIONS

§ 10.20 Motions by indigent defendant

North Carolina Indigent defendant seeking appointment of a hair, blood, and fingerprint expert must make a preliminary showing that the matter calling for expert testimony will be a significant factor in the trial. *State v. Tucker*, 329 N.C. 709, 407 S.E.2d 805 (1991), 28 CLB 177.

11. DISCOVERY

§ 11.00 In general

§ 11.25 —Records

Wisconsin Common law rule provides that district attorney's files are not open to public

inspection. *State ex rel. Richards v. Foust*, 477 N.W.2d 608 (1991), 28 CLB 402.

12. GUILTY PLEAS

§ 12.15 Nolo contendere or *non vult*

Rhode Island Recantations of complaining witnesses undermined factual basis of nolo contendere plea when recantations were not credible. *Fontaine v. State*, 602 A.2d 521 (1992), 28 CLB 489.

§ 12.40 Equivocal guilty plea

§ 12.50 —Court's failure to advise defendant of consequences of plea

California When restitution fine is imposed that was not contemplated by the plea bargain, defendant should be allowed to withdraw plea or fine should be reduced to \$100 statutory minimum. *People v. Walker*, 819 P.2d 861 (1991), 28 CLB 406.

13. EVIDENCE

§ 13.05 Presumptions and inferences

Connecticut Jury was properly instructed that they could draw unfavorable inference from defense's failure to produce available witness to corroborate defendant's alibi. *State v. Grant*, 602 A.2d 481 (1992), 28 CLB 489.

ADMISSIBILITY AND WITNESSES

§ 13.45 Character and reputation evidence

Georgia Mistrial granted when testimony of prosecution witness improperly placed defendant's character in issue. *Whitener v. State*, 261 Ga. 567 407 S.E.2d 735 (1991), 28 CLB 177.

§ 13.50 Proof of other crimes

Indiana Where there is evidence of self-defense, defendant in a homicide case may testify as to victim's prison record. *Russell v. State*, 577 N.E.2d 567 (1991), 28 CLB 174.

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Montana Other crimes evidence may be admitted not only to prove a common plan, scheme or system, but also as proof of motive, opportunity, intent, preparation, plan, knowledge, identity, or absence of mistake or accident. *State v. Matt*, 814 P.2d 52 (1991), 28 CLB 85.

South Dakota In habitual offender cases, state has initial burden of proving prior valid convictions, but burden then shifts to defendant to show prior convictions are invalid. *Stuck v. Leapley*, 473 N.W.2d 476 28 CLB 175.

§ 13.55 Proof of other bad acts

West Virginia In child abuse case, evidence of principal's prior sexual acts are admissible in case against aider and abettor to establish that principal committed the crime. *State v. Lola Mae C.*, 408 S.E.2d 31 (1991), 28 CLB 178.

§ 13.90 Exhibits

Washington Charts should not ordinarily be sent to the jury room, but reversible error does not occur unless the defendant was prejudiced thereby. *State v. Lord*, 822 P.2d 177 (1991), 28 CLB 404.

§ 13.95 Opinion evidence

Kentucky Testimony of police officer that accused was a "pedophile" was inadmissible, because police officer was not qualified to give such an opinion. *Dyer v. Commonwealth*, 816 S.W.2d 647 (1991), 28 CLB 294.

§ 13.115 Identification evidence

Colorado In some cases expert testimony on reliability of eyewitness identification may be proper and trial court has discretion to evaluate such testimony on a case-by-case basis. *Campbell v. People*, 814 P.2d 1 (1991), 28 CLB 183.

§ 13.151 —DNA printing tests

Arkansas Novel scientific evidence, such as results of DNA printing tests, are admissible if proponent proves reliability of the scientific evidence and the process underlying the calculations. *Prater v. State*, 820 S.W.2d 429 (1991), 28 CLB 405.

Iowa Expert witness can testify as to statistical probability of DNA testing. *State v. Brown*, 470 N.W.2d 30 (1991), 28 CLB 92.

§ 13.170 Privileged communications

California Statute abrogating psychotherapist-patient privilege when necessary to warn potential victim of danger, applied where victim was dead and trial was of alleged perpetrator. *People v. Wharton*, 809 P.2d 290 (1991), 28 CLB 93.

§ 13.195 Expert Witnesses

Colorado In some cases expert testimony on reliability of eyewitness identification may be proper and trial court has discretion to evaluate such testimony on a case-by-case basis. *Campbell v. People*, 814 P.2d 1 (1991), 28 CLB 183.

South Carolina Expert testimony as to the reliability of eyewitness identification evidence is admissible. *State v. Whaley*, 406 S.E.2d 369 (1991), 28 CLB 183.

Virginia An expert witness may not give his opinion on the precise or ultimate fact in issue, which must be left to the finder of fact. *Llamera v. Commonwealth*, 414 S.E.2d 597 (1992), 28 CLB 484.

§ 13.230 Cross-examination—right to use witness's prior statements

§ 13.245 —Impeachment by prior conviction

New Mexico Prior conviction was admissible to impeach defendant's testimony, even though offense on which conviction was based occurred after offense for which he was being tried. *State v. Trejo*, 825 P.2d 1252 (1992), 28 CLB 486.

§ 13.255 —Impeachment by prior inconsistent statement

Massachusetts Prosecution's substantive use in summation of testimony admitted solely to impeach witness justified setting aside of verdict. *Commonwealth v. Rosa*, 587 N.E.2d 767 (1992), 28 CLB 492.

§ 13.265 —Impeachment for bias or motive

Nevada Use of accomplice testimony will not be barred merely because prosecutor

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withholds benefit of bargain until after accomplice testifies. *Sheriff, Humboldt County v. Acuna*, 819 P.2d 197 (1991), 28 CLB 292.

§ 13.315 Hearsay evidence

California Law allowing hearsay at preliminary hearings is constitutional, but limits must be placed on the use of such testimony. *Whitman v. Santa Clara County Superior Court*, 820 P.2d 262 (1991), 28 CLB 403.

§ 13.317 —Agency exception

New York Interpreter, paid to deliver "prosecutable" cases, wasn't mere agent of police; therefore, police testimony as to what interpreter said during drug deal was inadmissible hearsay. *People v. Romero*, 581 N.E.2d 1048 (1991), 28 CLB 409.

§ 13.321 —Videotaped testimony

Indiana Statute specifying that a child witness giving videotaped testimony be unable to see or hear defendant violates state constitutional guarantee of face-to-face confrontation with witnesses. *Brady v. State*, 575 N.E.2d 981 (1991), 28 CLB 86.

§ 13.341 —Prior consistent statements as substantive evidence

Indiana Indiana Supreme Court limited application of rule that prior out-of-court statements, not under oath, were admissible as substantive evidence. *Modesitt v. State*, 578 N.E.2d 649 (1991), 28 CLB 295.

§ 13.375 —Res gestae and spontaneous declarations

Washington Excited utterance, to qualify as hearsay exception, must have been made while the declarant was under stress of excitement. *State v. Chapin*, 826 P.2d 194 (1992), 28 CLB 487.

WEIGHT AND SUFFICIENCY

§ 13.437 Shoeprint evidence

Illinois Shoeprint evidence, standing alone, is sufficient to convict. *People v. Campbell*, 586 N.E.2d 1261 (1992), 28 CLB 490.

14. TRIAL

§ 14.20 Qualifications of prosecutor

§ 14.25 —Disqualification of prosecutor

Arkansas Prosecuting attorney was not disqualified from prosecuting defendant merely because he had assisted defendant earlier in preparing an affidavit against the victim. *Chellette v. State*, 824 S.W.2d 389 (1992), 28 CLB 484.

Mississippi When the defendant's former defense attorney became assistant district attorney, state had the heavy burden of showing that the accused's confidentiality remained unscathed. *Aldridge v. State*, 583 So. 2d 203 (1991), 28 CLB 182.

§ 14.35 Right to public trial

Rhode Island Closure of individual voir dire examination of prospective jurors may have been unconstitutional infringement on the press and public's right of access to criminal proceedings. *Providence Journal Co. v. Superior Court*, 593 A.2d 446 (1991), 28 CLB 87.

§ 14.50 Absence of defendant or counsel

North Carolina Defendant's absence from bench conferences between trial judge and opposing counsel did not violate his constitutional right to be present at every stage of proceeding. *State v. Buchanan*, 410 S.E.2d 832 (1991), 28 CLB 403.

§ 14.62 Conduct of defense counsel

Nevada Defense counsel could be sanctioned for baseless motion suggesting that prosecutor was seeking death penalty for political reasons. *Young v. Ninth Judicial Circuit Dist. Court*, 818 P.2d 844 (1991), 28 CLB 293.

§ 14.70 Right to waive jury trial

New Jersey Defendant does not have constitutional right to waive a jury trial and insist of trial by the court. *State v. Dunne*, 590 A.2d 1144 (1991), 28 CLB 88.

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§ 14.150 Conduct of prosecutor

§ 14.195 —Defense counsel's "opening the door"

North Dakota Allowing prosecutor, in rebuttal to defense summation that defendant was victim of "witch hunt," to say that the state "charges only what we feel we can prove" was not reversible error. *State v. Thill*, 473 N.W.2d 451 (1991), 28 CLB 179.

15. JURY

SELECTION

§ 15.15 Systematic exclusion of blacks, etc.

Georgia Criminal defendant may exercise his peremptory challenges in a racially discriminatory manner. *State v. McCollum*, 261 Ga. 473, 405 S.E.2d 688 (1991), 28 CLB 181.

North Carolina Racial discrimination against blacks in selecting a grand jury cannot be overcome by racial discrimination against whites. *State v. Moore*, 494 S.E.2d 845 (1991), 28 CLB 91.

§ 15.45 Exposure of jurors to prejudicial publicity

Colorado Trial court has duty to inquire into possibility of juror exposure to prejudicial publicity mid-trial; three-step procedure to be utilized. *Harper v. People*, 817 P.2d 77 (1991), 28 CLB 296.

§ 15.50 Sequestering the jury

Massachusetts Trial judge had discretion to refuse to sequester the jury at the outset of the trial. *Commonwealth v. Cordle*, 412 Mass 172, 587 N.E.2d 1372 (1991), 28 CLB 485.

New York Trial judge did not commit reversible error when he directed a court officer to instruct deliberating jurors that they would be sequestered for the evening and to take them to dinner and a hotel. *People v. Bonaparte*, 574 N.E.2d 1027 (1991), 28 CLB 184.

INSTRUCTIONS

§ 15.70 Accomplice testimony

Nevada Use of accomplice testimony will not be barred merely because prosecutor withholds benefit of bargain until after accomplice testifies. *Sheriff, Humboldt County v. Acuna*, 819 P.2d 197 (1991), 28 CLB 292.

New York Defendant was not entitled to instruction that plea bargain with accomplice in return for his testimony was contrary to law. *People v. Thomasula*, 581 N.E.2d 1340 28 CLB 408.

§ 15.155 Lesser included offenses

Washington Court sanctioned use of "unable-to-agree jury instruction" that allows jury to move to lesser offense if unable to agree on greater charge. *State v. Labanowski*, 816 P.2d 26 (1991), 28 CLB 298.

§ 15.195 Punishment (or disposition following insanity acquittal) of no concern to jury

Colorado Jury must be told consequences of verdict of not guilty by reason of impaired mental condition. *Cordova v. People*, 817 P.2d 66 (1991), 28 CLB 295.

VERDICT

§ 15.290 General verdicts

§ 15.295 —Inconsistent verdicts

Indiana Verdicts of guilty of murder and not guilty of voluntary manslaughter were not consistent. *Bane v. State*, 587 N.E.2d 97 (1992), 28 CLB 491.

§ 15.305 Duty of trial judge to poll jury or conduct inquiry into juror misconduct

Rhode Island In conducting interview with juror who expressed uncertainty as to verdict, judge should not allow defense counsel to examine juror. *State v. Drowne*, 602 A.2d 540 (1992), 28 CLB 491.

§ 15.325 Guilty but mentally ill.

New Mexico Guilty but mentally ill verdict violates neither the right to due process nor

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equal protection of the laws. *State v. Neely*, 819 P.2d 249 (1991), 28 CLB 296.

17. SENTENCING AND PUNISHMENT

SENTENCING

§ 17.30 Right to separate sentence hearing where jury fixed punishment

Indiana Defendant was entitled to defense psychologist at penalty phase when statutory mitigating factor was possible extreme mental or emotional disturbance at time of murder. *Castor v. State*, 587 N.E.2d 1282 (1992), 28 CLB 485.

§ 17.40 Standards for imposing sentence

California Photographs of homicide victims while alive were admissible at sentencing phase of trial as evidence of circumstance of the crime, which can be aggravating factor. *People v. Edwards*, 819 P.2d 436 (1991), 28 CLB 404.

PUNISHMENT

§ 17.90 Credit for time spent in custody prior to sentencing

Nebraska Under Nebraska law, time spent in jail for failure to appear for sentencing is not credited against the defendant's sentence. *State v. Heckman*, 473 N.W.2d 461 (1991), 28 CLB 175.

§ 17.101 Imposition of restitution

California When restitution fine is imposed that was not contemplated by the plea bargain, defendant should be allowed to withdraw plea or fine should be reduced to \$100 statutory minimum. *People v. Walker*, 819 P.2d 861 (1991), 28 CLB 406.

§ 17.140 Multiple sentences —right to attach prior conviction

§ 17.145 —Enhancement

Washington Fifth Amendment did not bar testimony at sentencing phase by psychologist who interviewed defendant when defendant was in work-release program stemming

from earlier conviction. *State v. Post*, 826 P.2d 173 (1992), 28 CLB 486.

18. APPEAL AND ERROR

§ 18.25 Right to counsel

§ 18.35 —Withdrawal of counsel

Oregon Appointed counsel representing criminal defendant need not withdraw even though he considers defendant's arguments frivolous or meritless; he may see to it that defendant presents arguments in proper appellate form. *State v. Balfour*, 311 Or. 434, 814 P.2d 1069 (1991), 28 CLB 181.

§ 18.135 Wrongful conviction

New York Defendant could not recover damages under New York's erroneous conviction statute merely because her conviction was reversed and the indictment dismissed in the absence of clear and convincing proof that she did commit the crime. *Reed v. State*, 574 N.E.2d 433 (1991), 28 CLB 92.

19. PROBATION, PAROLE, AND PARDON

PROBATION

§ 19.00 Conditions for probation

Nebraska Conditions of probation may include weekend incarceration and prohibition against entering bowling alleys. *State v. Salyers*, 480 N.W.2d 143 (1992), 28 CLB 487.

20. PRISONER PROCEEDINGS

§ 20.00 In-prison proceedings

Arkansas Statute excluding prison inmates from judicial review of constitutionality of administrative adjudications was unconstitutional. *Clinton v. Bonds*, 816 S.W.2d 169 (1991), 28 CLB 293.

§ 20.45 Postconviction relief

Tennessee Withdrawal of petition for postconviction relief did not constitute waiver of ground for postconviction relief. *Albert v. State*, 813 S.W.2d 426 (1991), 28 CLB 174.

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21. ANCILLARY PROCEEDINGS FORFEITURE PROCEEDINGS

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Utah Under Utah law, exigent circum-

stances are required before police officer can seize vehicle without a warrant based on probable cause that it was involved in a drug offense. *Davis v. State*, 813 P.2d 1178 (1991), 28 CLB 91.

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§ 24.15 Bank-related crimes generally

Court of Appeals, 2d Cir. Sale of stolen check supported conviction for "scheme to defraud." *United States v. Stavroulakis*, 952 F.2d 686 (1992), 28 CLB 399.

Court of Appeals 4th Cir. Check-kiting scheme was violation of bank fraud statute. *United States v. Celestia*, 945 F.2d 756 (1991), 28 CLB 170.

§ 24.35 Civil Rights violations

§ 24.40 —Under color of law

Court of Appeals, 2d Cir. Police officer's harassment of female drivers constituted civil rights violation. *United States v. Langer*, 958 F.2d 522 (1992) 28 CLB 481.

§ 24.45 Conspiracy

Court of Appeals, 3d Cir. Continuity requirement under RICO was not met in land-owner action against railroad and coal companies. *Hughes v. Consol-Pennsylvania Coal Co.*, 945 F.2d 603 (1991), 28 CLB 169.

Court of Appeals, 4th Cir. Evidence that conspiracy began before date charged in indictment was properly admitted. *United States v. Lokey*, 945 F.2d 825 (1991), 28 CLB 171.

§ 24.65 Drug violations

U.S. Supreme Court Statute permitting attorney general to schedule a controlled substance on a temporary basis did not violate non-delegation doctrine. *Toubey v. United States*, 111 S. Ct. 1752 (1991), 28 CLB 79.

§ 24.100 Firearms violations

Court of Appeals, 1st Cir. Prior convictions were proper predicates to charge of possession of a firearm by a felon. *United States v. Minnick* 949 F.2d 8 (1991), 28 CLB 290.

Court of Appeals, 4th Cir. Conviction for possession of firearm upheld even though gun may have been shared by another person. *United States v. Jones*, 945 F.2d 747 (1991), 28 CLB 170.

§ 24.105 —Interstate transport

Court of Appeals, 9th Cir. Evidence that gun was manufactured in another country was sufficient for an interstate commerce connection. *United States v. Alvarez*, 960 F.2d 830 (1992), 28 CLB 483.

§ 24.135 Hobbs Act

U.S. Supreme Court *Quid pro quo* was necessary for conviction under Hobbs Act. *McCormick v. United States*, 111 S.Ct. 1807 (1991), 28 CLB 80.

Court of Appeals, 1st Cir. Evidence of source of immediate funds in Hobbs Act case not essential. *United States v. Tormos-Vega*, 959 F.2d 1103 (1992), 28 CLB 482.

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§ 24.160 Interstate racketeering

Court of Appeals, 4th Cir. Murder-for-hire scheme was not subject to federal prosecution where government manufactured jurisdiction. *United States v. Coates*, 949 F.2d 104 (1991), 28 CLB 288.

§ 24.240 Securities regulation violations

Court of Appeals, 2d Cir. Purchases of common stock were insufficient to prove securities fraud. *United States v. Mulheren*, 938 F.2d 364 (1991), 28 CLB 83.

25. CAPACITY

§ 25.10 Insanity

§ 25.15 —Burden of proof

Court of Appeals, 2d Cir. Fact that petitioner was escapee from mental institution was insufficient grounds for questioning his men-

tal competency. *Rollins v. Leonardo*, 938 F.2d 380 (1991), 28 CLB 84.

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U.S. Supreme Court Child pornography conviction reversed by reason of entrapment. *Jacobson v. United States*, 112 S.Ct. 1535 (1992), 28 CLB 478.

§ 27.20 Immunity from prosecution

U.S. Supreme Court Judge was immune from suit for ordering police officers to use excessive force. *Mireles v. Waco*, 112 S.Ct. 286 (1991), 28 CLB 285.

U.S. Supreme Court Federal agents had qualified immunity. *Hunter v. Bryant*, 112 S.Ct. 534 (1991), 28 CLB 285.

Court of Appeals, 3d Cir. Prosecutor was entitled only to qualified immunity for making false statement to press and other actions relating to seized business. *Schrob v. Catterton*, 948 F.2d 1402 (1991), 28 CLB 290.

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Court of Appeals, 9th Cir. Denial of motion for severance of charges did not deprive defendant of fair trial. *Featherstone v. Estelle*, 948 F.2d 1497 (1991), 28 CLB 289.

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§ 31.00 Sufficiency of indictment

§ 31.10 —Severance

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rera v. Collins, 954 F.2d 1029 (1992), 28 CLB 400.

33. GUILTY PLEAS

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§ 33.05 —Right to enforce plea bargain

Court of Appeals, D.C. Cir. Government's breach of plea agreement regarding scope of allocution harmless error. United States v. Pollard, 959 F.2d 1011 (1992), 28 CLB 482.

§ 33.15 Accepting plea

§ 33.30 —Duty to advise of consequences of plea

Court of Appeals, 4th Cir. District court was not required to inform defendant that once he pled guilty he could not withdraw plea. United States v. Lambey, 949 F.2d 133 (1991), 28 CLB 288.

34. EVIDENCE

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Court of Appeals, D.C. Cir. Conviction upheld where defendant constructively possessed drugs in another's apartment. United States v. Williams, 952 F.2d 418 (1991), 28 CLB 398.

§ 34.60 Circumstantial evidence

§ 34.65 —Intent

U.S. Supreme Court Evidence that infant suffered from battered-child syndrome was

relevant to establishing defendant's intent. Estelle v. McGuire, 112 S. Ct. 475 (1991), 28 CLB 396.

§ 34.170 Cross-examination procedure

§ 34.200 —Impeachment for prior illegal or immoral acts

Court of Appeals, 1st Cir. Defendant lacked standing to challenge evidence of prior bad acts of a codefendant. United States v. Isabell, 945 F.2d 1193 (1991), 28 CLB 171.

§ 34.220 Hearsay evidence

Court of Appeals, 9th Cir. Admission of FBI report of fellow inmate did not require reversal. United States v. Lewis, 954 F.2d 1386 (1992), 28 CLB 401.

§ 34.235 —Declarations of coconspirators

Court of Appeals, 6th Cir. Defendant was not given opportunity to fully develop coconspirator's testimony at suppression hearing. United States v. Taplin, 954 F.2d 1256 (1992), 28 CLB 401.

Court of Appeals, 11th Cir. Admission of statement by nontestifying codefendant was harmless error. United States v. Hemerlyck, 945 F.2d 1493 (1991), 28 CLB 173.

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Court of Appeals, 11th Cir. Defendant's right to testify in his own behalf was not waivable by defense counsel. United States v. Teague, 953 F.2d 1525 (1992), 28 CLB 401.

§ 35.50 Conduct of trial judge

§ 35.70 —Exclusion of evidence

Court of Appeals, 2d Cir. Precluding references to prior state trial violated defendants' right to fair trial. United States v. Giovanelli, 945 F.2d 479 (1991), 28 CLB 168.

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ble editing of tape recording was upheld. *United States v. Welch*, 945 F.2d 1378 (1991), 28 CLB 173.

§ 35.95 Conduct of prosecutor

Court of Appeals, 7th Cir. Prosecutor's attacks on credibility of defense counsel did not require reversal. *Pierson v. O'Leary*, 959 F.2d 1385 (1992), 28 CLB 482.

§ 35.100 Discretion to prosecute

§ 35.110 —Comments made during summation

Court of Appeals, 1st Cir. Prosecutor's closing argument asking jurors "to do justice for victim" did not require reversal. *United States v. Quesada-Bonilla*, 952 F.2d 597 (1991), 28 CLB 399.

Court of Appeals, 1st Cir. Prosecutor's reference during closing arguments to defendant's silence was harmless. *United States v. Hodge-Balwing*, 952 F.2d 607 (1991), 28 CLB 399.

36. THE JURY

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§ 36.10 Systematic exclusion of minority group members

U.S. Supreme Court Prosecutor's explanation for striking two Hispanic-speaking prospective jurors was acceptable. *Hernandez v. New York*, 111 S. Ct. 1859 (1991), 28 CLB 80.

U.S. Supreme Court Defendant adequately preserved his objection to the state's use of peremptory challenges. *Trevino v. Texas*, 112 S. Ct. 1547 (1992), 28 CLB 478.

§ 36.25 Conduct of voir dire

U.S. Supreme Court Trial court's refusal to question prospective jurors about news reports was proper. *Mu'min v. Virginia*, 111 S. Ct. 1899 (1991), 28 CLB 83.

U.S. Supreme Court Delegation of jury voir dire to magistrate was proper. *Peretz v. United States*, 111 S. Ct. 2661 (1991), 28 CLB 82.

§ 36.30 Peremptory challenges

Court of Appeals, 5th Cir. Peremptory challenges of prospective jurors for deficiencies in educational background was proper. *United States v. Hinojosa*, 958 F.2d 624 (1992), 28 CLB 481.

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§ 36.55 Accomplice testimony

Court of Appeals, 5th Cir. Failure to give accomplice instruction was not plain error. *United States v. Arky*, 938 F.2d 579 (1991), 28 CLB 85.

§ 36.65 Burden of proof

U.S. Supreme Court Error in instruction allowing jury to presume malice from use of deadly weapon was fatal. *Yates v. Evatt*, 111 S. Ct. 1884 (1991), 28 CLB 80.

§ 36.70 Character evidence

Court of Appeals, 2d Cir. Defendant was not entitled to instruction that evidence of good character alone would be sufficient to create reasonable doubt of guilt. *United States v. Pujana-Mena*, 949 F.2d 24 (1991), 28 CLB 286.

§ 36.85 Duty to charge on defendant's theory of defense

Court of Appeals, 5th Cir. Jury charge on defendant's "good faith belief" upheld. *United States v. Barnett*, 945 F.2d 1296 (1991), 28 CLB 172.

Court of Appeals, 5th Cir. Refusal to give defendant's requested instruction of "threat" was not improper. *United States v. Turner*, 960 F.2d 461 (1992), 28 CLB 483.

§ 36.155 Charge on issues of law

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37. POSTTRIAL MOTIONS

§ 37.00 Motion for new trial

Court of Appeals, 2d Cir. Remand was required to determine whether newly discovered evidence warranted retrial. *United States v. Siddiqi*, 959 F.2d 1167 (1992), 28 CLB 482.

Court of Appeals, 5th Cir. Seven-day period for defendant to move for new trial was inflexible. *United States v. Zuniga-Salinas*, 945 F.2d 1302 (1991), 28 CLB 172.

§ 37.35 Federal habeas corpus

Court of Appeals, 9th Cir. Judicial estoppel did not apply to habeas corpus proceeding. *Morris v. State of Cal.*, 945 F.2d 1456 (1991), 28 CLB 173.

§ 37.50 —Exhaustion of state remedies

U.S. Supreme Court Questions of federal law decided by state courts were nonreviewable if decision rests on independent state-court grounds. *Coleman v. Thompson*, 111 S. Ct. 2546 (1991), 28 CLB 82.

§ 37.55 —Waiver or deliberate bypass

U.S. Supreme Court State procedural default barred federal review of *Miranda* claim. *Yist v. Nunnemaker*, 111 S. Ct. 2590 (1991), 28 CLB 82.

U.S. Supreme Court Cause-and-prejudice standard was to be applicable to habeas corpus petitioner failure to develop material fact in state court proceedings. *Keeney v. Tamayo-Reyes*, 112 S. Ct. 1715 (1992), 28 CLB 479.

§ 37.65 —Procedure

U.S. Supreme Court Court of appeals not required to consider prisoner's claim for

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38. SENTENCING AND PUNISHMENT

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§ 38.10 Presentence report

Court of Appeals, 2d Cir. Defendant was not entitled to presentence reports of accomplice witnesses without showing of compelling need. *United States v. Moore*, 949 F.2d 68 (1991), 28 CLB 287.

Court of Appeals, 9th Cir. Trial court was not required to order updated presentence report before denying probation. *United States v. Hardesty*, 958 F.2d 910, (1992) 28 CLB 480.

§ 38.30 Standards for imposing sentence

U.S. Supreme Court Due process was violated where defendant was not given adequate notice that he might be sentenced to death. *Lankford v. Idaho*, 111 S. Ct. 1723 (1991), 28 CLB 78.

U.S. Supreme Court Agreement by a defendant to stipulated facts establishing more serious crime than that pleaded to may lead to enhanced sentence. *Braxton v. United States*, 111 S. Ct. 1854 (1991), 28 CLB 80.

U.S. Supreme Court Weight of container was properly included in determining weight of drug for sentencing purposes. *Chapman v. United States*, 111 S. Ct. 1919 (1991), 28 CLB 80.

U.S. Supreme Court District court may not make upward departure under sentencing guidelines without first notifying parties. *Burns v. United States*, 111 S. Ct. 2182 (1991), 28 CLB 78.

U.S. Supreme Court Sentencing guidelines applied to sentences of juveniles. *United States v. R.L.C.*, 112 S. Ct. 1329 (1992), 28 CLB 478.

Court of Appeals, 1st Cir. Defendant's diminished mental capacity did not justify downward departure in sentencing guidelines. *United States v. Lanzon*, 938 F.2d 326 (1991), 28 CLB 83.

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Court of Appeals, 2d Cir. Downward departure from sentencing guidelines was proper on ground of defendant's extreme vulnerability to physical attack. *United States v. Gonzalez*, 945 F.2d 525 (1991), 28 CLB 169.

Court of Appeals, 2d Cir. Amounts that victims potentially may have lost were properly considered in imposing sentence. *United States v. Lohan*, 945 F.2d 1214 (1991), 28 CLB 172.

Court of Appeals, 2d Cir. Court's decision not to grant downward departure from sentencing guidelines was unappealable. *United States v. Ritchey*, 949 F.2d 61 (1991), 28 CLB 287.

Court of Appeals, 2d Cir. Downward departure in sentencing for cooperation with the prosecution required a motion by the government. *United States v. Aqu*, 949 F.2d 63 (1991), 28 CLB 287.

Court of Appeals, 3d Cir. Defendant's denial that he committed robbery was basis for denial of sentence reduction. *United States v. Frierson*, 945 F.2d 650 (1991), 28 CLB 169.

Court of Appeals, 4th Cir. Defendant was not eligible for sentence reduction as a "minor" participant merely because there were others who were more culpable. *United States v. Palinkas*, 938 F.2d 456 (1991), 28 CLB 84.

Court of Appeals, 4th Cir. Defendant was properly classified as career offender even though one prior offense was a misdemeanor under state law. *United States v. Pinckney*, 938 F.2d 519 (1991), 28 CLB 84.

Court of Appeals, 6th Cir. Term "victim" included injured bystanders within meaning of sentencing guidelines. *United States v. Muhammad*, 948 F.2d 1449 (1991), 28 CLB 289.

Court of Appeals, 10th Cir. Sentence of defendant on same date for different offenses did not make offenses "related". *United States v. Villarreal*, 960 F.2d 117 (1992), 28 CLB 481.

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§ 38.60 Credit for time spent in custody prior to sentencing

U.S. Supreme Court Computation of credit for time served after defendant began to serve sentence was proper. *United States v. Wilson*, 112 S. Ct. 1351 (1992), 28 CLB 479.

Court of Appeals, 1st Cir. Defendant was denied sentencing credit for time spent in home confinement. *United States v. Zackular*, 945 F.2d 423 (1991), 28 CLB 173.

39. THE APPEAL

U.S. Supreme Court Time to file an appeal runs from date court denies motion for reconsideration. *United States v. Ibarra*, 112 S. Ct. 4 (1991), 28 CLB 285.

U.S. Supreme Court Inmate's brief was to be functional equivalent to notice of appeal. *Smith v. Barry*, 112 S. Ct. 678 (1992), 28 CLB 398.

§ 39.35 Scope of appellate review

U.S. Supreme Court Dismissal of in forma pauperis complaint was properly reviewed for abuse of discretion. *Denton v. Hernandez*, 112 S. Ct. 1728 (1992), 28 CLB 480.

Court of Appeals, 1st Cir. Petitioner alleging incompetent counsel issue on appeal did not have burden at pleading stage of establishing meritorious issue. *United States v. Tajed-dini*, 945 F.2d 458 (1991), 28 CLB 168.

40 PROBATION AND PAROLE

§ 40.25 Revocation of parole

Court of Appeals, 7th Cir. Exhaustion of remedies in state court was not necessary in order for prisoner to challenge parole procedures. *Clark v. Thompson*, 960 F.2d 663 (1992), 28 CLB 483.

41. PRISONER PROCEEDINGS

§ 41.00 In general

U.S. Supreme Court Isolated prison incidents of alleged unconstitutional conduct

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may be referred to magistrate. *McCarthy v. Bronson*, 111 S. Ct. 1737 (1991), 28 CLB 79.

U.S. Supreme Court Party seeking modification of consent decree must establish significant change in facts or law. *Rufo v. Inmates of Suffolk County Jail*, 112 S. Ct. 748 (1992), 28 CLB 398.

§ 41.05 Cruel and unusual treatment

U.S. Supreme Court Prisoners were required to show deliberate indifference by prison officials when challenging conditions of confinement. *Wilson v. Seiter*, 111 S. Ct. 2321 (1991), 28 CLB 81.

U.S. Supreme Court Prisoner may bring valid suit for cruel and unusual punishment even though prisoner has not suffered serious injury. *Hudson v. McMillian*, 112 S. Ct. 995 (1992), 28 CLB 396.

U.S. Supreme Court Deputy sheriff's method of apprehending inmate constituted cruel and unusual punishment. *Miller v. Glanz*, 948 F.2d 1562 (10th Cir. 1991), 28 CLB 289.

§ 41.45 Other actions under Federal Civil Rights Act

§ 41.50 —Immunity

U.S. Supreme Court State prosecutor was absolutely immune for participation in probable cause hearing. *Burns v. Reed*, 111 S. Ct. 1934 (1991), 28 CLB 78.

U.S. Supreme Court Agents had qualified immunity for arrests for threatening the president. *Hunter v. Bryant*, 112 S. Ct. 534 (1991), 28 CLB 397.

Court of Appeals, 5th Cir. Prosecutor and prosecution witnesses were entitled to absolute immunity for civil rights violations. *Young v. Biggers*, 938 F.2d 565 (1991), 28 CLB 85.

§ 41.55 Medical treatment for prisoners

Court of Appeals, 1st Cir. Inadvertent failures to provide medical care did not constitute Eighth Amendment violation. *Des-Rosiers v. Moran*, 949 F.2d 15 (1st Cir. 1991), 28 CLB 290.

§ 41.60 Prison regulations

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U.S. Supreme Court Child welfare act did not authorize Civil Rights Act action. *Suter v. Artist M.*, 112 S. Ct. 1360 (1992), 28 CLB 479.

Court of Appeals, 1st Cir. Body cavity search of inmate did not constitute civil rights violation. *Cookish v. Powell*, 945 F.2d 441 (1991), 28 CLB 168.

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§ 42.45 Requirements

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§ 42.60 In general

Court of Appeals, 2d Cir. Amendment to forfeiture complaint to conform to evidence of owner's knowledge after date of arrest was in error. *United States v. Certain Real Property*, 945 F.2d 1252 (1991), 28 CLB 172.

Court of Appeals, 3d Cir. District court did not err in dismissing defendant's claim to seized money. *United States v. \$1,322,242.58*, 938 F.2d 433 (1991), 28 CLB 84.

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43. ADMISSIONS AND CONFESSIONS

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§ 43.15 —Trickery

Montana Confession was involuntary when defendant, who had been awake for twenty-six hours, was lied to about the evidence against him. *State v. Mayes*, 825 P.2d 1196 (1992), 28 CLB 487.

§ 43.45 Fruit of an earlier inadmissible statement

Minnesota Victim of crime was not precluded from testifying against defendant because her name cropped up during interrogation of defendant in violation of his *Miranda* rights. *State v. Doughty*, 472 N.W.2d 299 (1991), 28 CLB 89.

VIOLATIONS OF *MIRANDA* STANDARDS AS GROUNDS FOR EXCLUSION

§ 43.90 Waiver of *Miranda* rights

§ 43.105 —Effect of request for counsel

North Carolina Defendant was not subject to further police interrogation after making two attempts to contact his lawyer with the statement that his attorney had told him not to talk to anyone without calling him first. *State v. Tucker*, 414 S.E.2d 548 (1992), 28 CLB 485.

44. CONFRONTATION OF WITNESSES

§ 44.00 In general

U.S. Supreme Court Prosecution was not required to produce at trial four-year-old

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Court of Appeals, 6th Cir. Right of confrontation applied to sentencing hearings. *United States v. Silverman*, 945 F.2d 1337 (1991), 28 CLB 173.

§ 44.05 —Interpretations by state courts

North Carolina Defendant's absence from bench conferences between trial judge and opposing counsel did not violate his constitutional right to be present at every stage of proceedings. *State v. Buchanan*, 410 S.E.2d 832 (1991), 28 CLB 403.

§ 44.15 Codefendant's out-of-court statements

§ 44.20 —Admission subject to limiting instructions

Michigan Despite redaction, codefendant's out-of-court statement was not admissible if there was substantial risk that jury would consider it in deciding defendant's guilt. *People v. Banks*, 475 N.W.2d 769 (1991), 28 CLB 299.

§ 44.30 Opportunity to cross-examine

U.S. Supreme Court Preclusion of evidence of defendant's own sexual conduct in rape case did not require reversal. *Michigan v. Lucas*, 111 S. Ct. 1743 (1991), 28 CLB 79.

Court of Appeals, D.C. Cir. Error by court in refusing to permit defense counsel to cross-examine police officer was harmless. *United States v. Stock*, 948 F.2d 1299 (1991), 28 CLB 290.

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tute invocation of Fifth Amendment right to counsel. *McNeil v. Wisconsin*, 111 S. Ct. 2204 (1991), 28 CLB 78.

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§ 45.30 —Right to defend pro se

Nebraska A trial court should warn a defendant of the dangers and disadvantages of self-representation, but the warning is not required. *State v. Green*, 470 N.W.2d 736 (1991), 28 CLB 87.

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§ 45.110 Ineffectiveness

Court of Appeals, 1st Cir. Defense counsel's decision to waive closing argument was not ineffective assistance of counsel. *United States v. Natanel*, 938 F.2d 302 (1991), 28 CLB 83.

§ 45.115 —Interpretations by state courts

Minnesota Attorney's suspension in the middle of a trial does not necessarily deprive defendant of effective assistance of counsel. *State v. Smith*, 476 N.W.2d 511 (1991), 28 CLB 408.

North Dakota If a court of appeals cannot determine from the record whether defendant's trial counsel was ineffective and defendant's conviction is affirmed, defendant can reopen the issue via postconviction proceedings. *State v. Woehlhoff*, 473 N.E.2d 446 (1991), 28 CLB 176.

§ 45.125 —Incorrect legal advice

Pennsylvania The fact that a trial strategy was unsuccessful does not mean that it was unreasonable. *Commonwealth v. Savage*, 602 A.2d 309 (1992), 28 CLB 488.

§ 45.130 —Failure to introduce evidence or make objections

Court of Appeals, 4th Cir. Habeas corpus petitioner was entitled to evidentiary hearing on issue relating to ineffective assistance of counsel. *Washington v. Murray*, 952 F.2d 1472 (1991) 28 CLB 399.

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U.S. Supreme Court Imposition of mandatory life sentence without consideration of mitigating factors did not violate Eighth Amendment. *Harmelin v. Michigan*, 111 S. Ct. 2680 (1991), 28 CLB 82.

§ 46.01 —Interpretations by state courts

Illinois Requiring habitual child sex offenders to register with the police did not constitute cruel and unusual punishment. *People v. Adams*, 581 N.E.2d 637 (1991), 28 CLB 410.

§ 46.05 Death penalty

U.S. Supreme Court A capital sentencing jury was not barred from considering victim impact evidence. *Payne v. Tennessee*, 111 S. Ct. 2597 (1991), 28 CLB 82.

U.S. Supreme Court Stay of execution by cyanide gas vacated. *Gomez v. United States* Dist. Court, 112 S. Ct. 1652 (1992), 28 CLB 478.

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Court of Appeals, 5th Cir. Death penalty upheld despite claim of incompetency of counsel. *Sawyer v. Whitley*, 945 F.2d 812 (1991), 28 CLB 171.

Court of Appeals, 9th Cir. Defendant was not entitled to hearing on claim that administration of death penalty was discriminatory. *Richmond v. Lewis*, 948 F.2d 1473 (1991), 28 CLB 289.

California Photographs of homicide victims while alive were admissible at sentencing phase of trial as evidence of circumstance of the crime, which can be aggravating factor. *People v. Edwards*, 819 P.2d 436 (1991), 28 CLB 404.

§ 46.10 —Statutory requirements

Colorado Colorado sentencing statute requiring imposition of the death penalty when aggravating and mitigating factors are equal violated state constitution's ban on cruel and unusual punishment. *People v. Young*, 814 P.2d 834 (1991), 28 CLB 179.

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§ 47.00 In general

§ 47.05 —Interpretations by state courts

New York Defendant, whose guilty plea was vacated because it was based on misinformation that deliberating jury was about to convict him, had been put in jeopardy and could not be retried. *Randall v. Rothwax*, 583 N.E.2d 924 (1991), 28 CLB 408.

§ 47.20 Mistrials

Court of Appeals, 8th Cir. Second trial after defendant was granted motion for retrial did not constitute double jeopardy. *Grubbs v. Delo*, 948 F.2d 1459 (1991), 28 CLB 289.

§ 47.30 Crimes against separate sovereignties

§ 47.35 —Dual sovereignty doctrine

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§ 47.40 Implied acquittal

Illinois Prosecutor's decision not to seek death penalty did not constitute "acquittal" to bar a subsequent decision to the contrary. *People v. Davis*, 579 N.E.2d 877 (1991), 28 CLB 296.

§ 47.45 Separate and distinct offenses

Montana Defendant convicted of possession of drugs on his person and possession of drugs on the premises was not subjected to double jeopardy. *State v. Crowder*, 810 P.2d 299 (1991), 28 CLB 87.

South Dakota Concurrent sentences for possession of a controlled substance with intent to distribute and simple possession did not constitute double jeopardy for same offense. *State v. Groves*, 473 N.W.2d 456 (1991), 28 CLB 176.

Virginia Defendant could be prosecuted for the felony of attempted murder after being convicted for obstruction of justice stemming from a fight with a police officer. *Martin v. Commonwealth*, 406 S.E.2d 15 (1991), 28 CLB 90.

West Virginia Separate punishments may be imposed for separate offenses arising out of a single criminal transaction. *State v. Drennen*, 408 S.E.2d 24 (1991), 28 CLB 177.

§ 47.50 —Same transaction

U.S. Supreme Court Double jeopardy clause did not bar prosecution of defendant for either drug conspiracy or substantive charges. *United States v. Felix*, 112 S. Ct. 1377 (1992), 28 CLB 479.

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Minnesota Statute making possession of "crack" cocaine more culpable than possession of powder cocaine denies blacks equal protection under Minnesota constitution. State v. Russell, 477 N.W. 2d 886 (1991), 28 CLB 403.

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§ 54.10 Suggestiveness of identification procedure

Indiana Defendant's distinctive jacket did not make lineup overly suggestive when witness testified that he relied on defendant's facial characteristics to identify him. Stone v. State, 587 N.E.2d 672 (1992), 28 CLB 491.

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§ 58.03 Property subject to search

Mississippi School administrators' search of student's locker based on student informant's statement that defendant had tried to sell him guns was reasonable search. S.C. v. State, 583 So. 2d 188 (1991), 28 CLB 184.

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§ 58.15 —Plain view

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§ 58.25 —Exigent circumstances

Court of Appeals, 4th Cir. Exigent circumstances were lacking in warrantless search of home of alleged narcotics supplier. United States v. Campbell, 945 F.2d 713 (1991), 28 CLB 170.

Massachusetts Justification for search for gun did not extend to search of plastic bag found instead of gun. Commonwealth v. Ferguson, 410 Mass. 611, 574 N.E.2d 990 (1991), 28 CLB 180.

Michigan Police officer's entry of home could be justified by need to assist injured person. City of Troy v. Ohlinger, 475 N.W.2d 54 (1991), 28 CLB 299.

§ 58.30 —Automobile searches

U.S. Supreme Court Search of closed container in car was permissible. Florida v. Jimeno, 111 S. Ct. 1801 (1991), 28 CLB 79.

U.S. Supreme Court Fact that police have probable cause to believe that container in vehicle contains contraband does not justify search of entire vehicle. California v. Acevedo, 111 S. Ct. 1982 (1991), 28 CLB 81.

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Bostick, 111 S. Ct. 2382 (1991), 28 CLB 81.

§ 58.32 —Car passengers

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Arkansas Delivering "counterfeit hashish" was not a crime in Arkansas and therefore, the charge could not validate an arrest warrant that would support search of defendant's premises. Abbott v. State, 819 S.W.2d 694 (1991), 28 CLB 407.

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